REMARKS

Reconsideration of the above referenced application in view of the enclosed amendments and remarks is requested. Claims 1, 6-8, and 21-23 have been amended. Claims 1, 4, 6-8, 11, and 21-31 remain in the application.

ARGUMENT

Claims 1, 4, 6-8, 11, and 21-31 are rejected under 35 USC 102(b) as being anticipated by Herz, et al. (6,088,722)(hereinafter Herz).

Herz discloses a system for generating customer profiles for selecting which TV programs to broadcast to customer's set top boxes. Herz appears to teach that the viewing habits of a customer may be collected at the set top box and sent to the cable system head end. Thus, the actual viewing record of customers may be used to affect what subsequent TV programs are broadcast. Since the TV programs to be broadcast are changing based on actual viewing habits, Herz's system sends an updated electronic program guide (EPG) to the customer's set top box to reflect the TV programming changes.

Turning now to independent claim 1, it has been amended to more particularly recite the present invention. Claim 1 recites downloading an update for the **content protection** software resident on the client device from the server, the **content protection** software, when executing on the client device, for decrypting the PPV audio-visual content and controlling consumption of the PPV audio-visual content, the downloading being performed *when the received billing log data indicates past consumption of PPV audio-visual content by the client device at less than a predetermined threshold for the selected period of time.*

Claim 1 requires that content protection software on the client device is updated based on certain conditions. Herz teaches that an EPG is updated on the set top box based on viewing habits. More particularly, Herz teaches that EPG **data** is updated. That is, the EPG data that describes which TV programs are to be broadcast at which times is updated, NOT the EPG software on the set top box that

reads the EPG data and displays it in response to a viewer command. Herz does not teach or suggest updating content protection software on the client device at all.

In addition, Claim 1 requires that the update of the content protection software is performed when the billing log data for that client device indicates *past consumption of PPV content is less than a predetermined threshold*. The low level of viewing activity is a sign that the content protection software on that client device may have been compromised and should be updated. The Office action of September 25, 2006 cites to many passages of Herz (as detailed in paragraph 2) for this limitation. However, <u>a close reading of the cited text in Herz reveals that Herz does not in fact teach or suggest this claim limitation</u>. The Applicants respectfully request the Examiner to more specifically cite to where the Examiner believes the claim limitation is taught and more fully explain the reasoning. The Office action asserts that Herz's head end polls the STMT for the number of movies watched and if the number is less than a predetermined threshold, the head end updates the EPG or program schedule accordingly based on time, day, week, etc. <u>This is incorrect</u>. What Herz actually teaches is that the viewing habits of the customer are generally used to change the subsequent broadcast schedule, and thus the EPG data sent to the set top box. Herz does not disclose updating content protection software on the client device when the user's PPV viewing activity is less than a threshold, as currently claimed.

Herz does not teach or suggest at least two of the claimed limitations. Therefore, a valid case for anticipation has not been made and independent claim 1 is allowable as presented.

Claims 4, 6, and 7 depend from allowable independent claim 1. Hence, they are also allowable.

Furthermore, with respect to claim 6, it recites that the content protection software on the client device is **tamper resistant** software. The Examiner cites to Herz at col. 45, line 6 – col. 47, line 8, and col. 48, line 36, as teaching this limitation. This is incorrect. Herz discloses nothing about tamper resistant software as that term is understood by those skilled in the art. Herz does not disclose this limitation. Therefore, claim 6 is allowable.

Claims 24-27 are also dependent on claim 1, so they are also allowable.

Furthermore, with respect to claim 24, it requires that the updated content protection software includes a new cryptographic technique. A cryptographic technique in this context implies a particular cryptographic algorithm or process. Herz discloses changing cryptographic keys over time using a Vernam (one time pad) technique. Herz does not teach or suggest having a new cryptographic technique in the updated content protection software, because Herz uses the same technique all the time and just changes the key. This is not what is required by claim 24.

As to claim 25, as argued above, Herz teaches nothing about tamper resistant software as that term is understood by those skilled in the art. Therefore, Herz teaches nothing about having the updated content protection software include a new tamper resistant technique.

As to claim 26, the cited text of Herz does not teach or suggest that the updated content protection software includes a new software configuration. Instead, Herz discloses that the EPG data on the set top box is updated, not the set top box software.

For independent claim 8, a similar rationale as stated above is applicable. Therefore, claim 8 is also allowable. Additionally, claim 11 is allowable since it is dependent from allowable claim 8.

As to independent claim 21, it contains similar limitations as allowable independent claim 1. Therefore, it is also allowable under the same rationale. In addition, it is clear from a reading of claim 21 that it requires at least three elements:

1) a billing database to store billing log data received from a plurality of client devices, the billing log data specifying past consumption of pay-per-view (PPV) audio-visual content received by a client device from the server over a broadcast network of the content distribution system during a selected period of time;

2) a client software update database to store versions of updateable content reception, protection, and consumption software, the software, when executing on the client device, for decrypting the PPV audio-visual content and controlling consumption of the PPV audio-visual content; and

3) a client software manager configured to receive billing log data from the client devices, to update the billing database using the received billing log data, to mark a client device in the billing database as eligible for receiving **updated content reception, protection and consumption software** when billing log data for the client device **indicates consumption of PPV audio-visual content by the client device at less than a predetermined threshold for the selected period of time,** and to download a version of the updateable content reception, protection, and consumption software to each marked client device for subsequent use in receiving, decrypting, and consuming content.

As argued above, Herz does not teach updating the content protection software on the client device, nor does Herz teach updating this software when the user's viewing activity is less than a predetermined threshold. Therefore, claim 21 is allowable.

Claims 22-23 are also allowable for the same reasons as claims 6 and 7.

Claims 28-31 are dependent on allowable independent claim 21. Thus, they are also allowable.

CONCLUSION

In view of the foregoing, Claims 1, 4, 6-8, 11, and 21-31 are all in condition for allowance. If the Examiner has any questions, the Examiner is invited to contact the undersigned at (503) 264-8074. Early issuance of Notice of Allowance is respectfully requested.

Respectfully submitted,

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